

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 6**

HCL AMERICA, INC.

Cases: 06-CA-253926

and

**UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE
WORKER INTERNATIONAL UNION,
AFL-CIO, CLC**

06-CA-254481

06-CA-254997

06-CA-255618

06-CA-258113

06-CA-259282

06-CA-261168

06-CA-261244

**HCL AMERICA INC.'S ANSWER TO ORDER CONSOLIDATING
CASES, CONSOLIDATED COMPLAINT, AND NOTICE OF HEARING**

HCL America, Inc., (“HCL”) pursuant to Sections 102.20 and 102.21 of the Rules and Regulations of the National Labor Relations Board, answers the Order Consolidating Cases, Consolidated Complaint and Notice of Hearing (“Complaint”) issued in the above-referenced case as follows:

FIRST DEFENSE

In response to the unnumbered first paragraph of the Complaint, HCL acknowledges that the following Case Numbers have been consolidated: 06-CA-253926, 06-CA-254481, 06-CA-254997, 06-CA-255618, 06-CA-258113, 06-CA-259282, 06-CA-261168, and 06-CA-261244.

In response to the unnumbered second paragraph of the Complaint, HCL denies that it has engaged or is engaging in unfair labor practices, as set forth in Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Board’s Rules and Regulations.

1. HCL denies the allegations in Paragraph 1 of the Complaint to the extent they reference and rely on documents that are in writing and are the best evidence of their contents;

therefore, all allegations or characterizations of fact concerning the contents and dates of service of the Charges identified in Paragraph 1 of the Complaint are denied.

2. HCL admits only so much of Paragraph 2 of the Complaint as alleges that it is a corporation which maintains an office and place of business in Pittsburgh, Pennsylvania and has been engaged in providing business and information technology services. By way of further response, and after a reasonable investigation, HCL is without knowledge or information sufficient to determine the meaning attached to the phrase “[a]t all material times” and, therefore, denies the same.

3. HCL denies, as stated, the allegations in Paragraph 3 of the Complaint.

4. The allegations in Paragraph 4 of the Complaint are conclusions of law to which no response is required. To the extent a response is deemed necessary, HCL admits only that it has been engaged in commerce within the meaning of Section 2(2), 2(6), and 2(7) of the Act. By way of further response, and after a reasonable investigation, HCL is without knowledge or information sufficient to determine the meaning attached to the phrase “[a]t all material times” and, therefore, denies the same.

5. The allegations in Paragraph 5 of the Complaint are conclusions of law to which no response is required. To the extent a response is deemed necessary, upon information and belief, HCL admits only that the Union has been a labor organization within the meaning of Section 2(5) of the Act. By way of further response, and after a reasonable investigation, HCL is without knowledge or information sufficient to determine the meaning attached to the phrase “[a]t all material times” and, therefore, denies the same.

6. The allegations in Paragraph 6 of the Complaint are conclusions of law to which no response is required. To the extent a response is deemed necessary, HCL denies these

allegations. By way of further response, the following individuals have held the positions set forth opposite their respective names and have been supervisors at HCL.

(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)

After a reasonable investigation, HCL is without knowledge or information sufficient to determine the meaning attached to the phrase “[a]t all material times” and, therefore, denies the same.

7. The allegations in Paragraph 7 of the Complaint are conclusions of law to which no response is required. To the extent a response is deemed necessary, upon information and belief, HCL admits only that (b) (6), (b) (7)(C) held a meeting with employee(s) in HCL’s “Pirate” meeting room on or about July 29, 2019. HCL denies all remaining allegations in Paragraph 7 of the Complaint.

8. Upon information and belief, HCL admits only the allegations contained in Paragraph 8 of the Complaint that allege (b) (6), (b) (7)(C) spoke with employees in a conference room on or about September 5, 2019. HCL denies all remaining allegations in Paragraph 8 of the Complaint.

9. The allegations in Paragraph 9 of the Complaint are conclusions of law to which no response is required. To the extent a response is deemed necessary, these allegations are denied.

10. The allegations in Paragraph 10 of the Complaint are conclusions of law to which no response is required. To the extent a response is deemed necessary, HCL admits only that

(b) (6), (b) (7)(C) spoke to a group of employees on or about September 23, 2019. HCL denies all remaining allegations in Paragraph 10 of the Complaint.

11. The allegations in Paragraph 11 of the Complaint are conclusions of law to which no response is required. To the extent a response is deemed necessary, HCL admits that the identified group of employees has been certified as constituting an appropriate Unit for the purposes of collective bargaining.

12. HCL admits the allegations in Paragraph 12 of the Complaint.

13. The allegations in Paragraph 13 of the Complaint are conclusions of law to which no response is required. To the extent a response is deemed necessary, HCL admits the Union has been the exclusive collective-bargaining representative of the Unit since on or about October 2, 2019.

14. The allegations in Paragraph 14 of the Complaint are conclusions of law to which no response is required. To the extent a response is deemed necessary, these allegations are denied. By way of further response, and after a reasonable investigation, HCL is without knowledge or information sufficient to determine the meaning attached to the phrase “bargaining unit work” and, therefore, denies the same.

15. HCL denies, as stated, the allegation in Paragraph 15 of the Complaint. By way of further response, HCL’s restrictions as to when employees may participate in training during work time has remained consistent at all material times.

16. HCL denies the allegations in Paragraph 16 of the Complaint to the extent they reference and rely on HCL’s “Appearance policy” which is in writing, speaks for itself, and is the best evidence of its contents; therefore, all allegations or characterizations of fact concerning HCL’s “Appearance policy” are denied.

17. HCL denies the allegations in Paragraph 17 of the Complaint to the extent they reference and rely on HCL's "Break policy" which is in writing, speaks for itself, and is the best evidence of its contents; therefore, all allegations or characterizations of fact concerning HCL's "Break policy" are denied.

18. HCL denies the allegations in Paragraph 18 of the Complaint to the extent they reference and rely on policies contained in HCL's employee handbook and/or maintained on its employee portal, which are in writing, speak for themselves, and are the best evidence of their own contents; therefore, all allegations or characterizations of fact concerning these policies are denied.

19. HCL denies the allegations in Paragraph 19 of the Complaint to the extent they reference and rely on HCL's "Bereavement policy" which is in writing, speaks for itself, and is the best evidence of its contents; therefore, all allegations or characterizations of fact concerning HCL's "Bereavement policy" are denied.

20. HCL denies the allegations in Paragraph 20 of the Complaint to the extent they reference and rely on HCL's "Holiday policy" which is in writing, speaks for itself, and is the best evidence of its contents; therefore, all allegations or characterizations of fact concerning HCL's "Holiday policy" are denied.

21. HCL denies the allegations in Paragraph 21 of the Complaint to the extent they reference and rely on "Family and Medical Leave Act (FMLA) policies" contained in HCL's employee handbook and/or maintained on its employee portal, which are in writing, speak for themselves, and are the best evidence of their own contents; therefore, all allegations or characterizations of fact concerning HCL's "Family and Medical Leave Act (FMLA) policies" are denied.

22. HCL denies the allegations in Paragraph 22 of the Complaint to the extent they reference and rely on HCL's "Leave Without Pay Policy" which is in writing, speaks for itself, and is the best evidence of its contents; therefore, all allegations or characterizations of fact concerning HCL's "Leave Without Pay Policy" are denied.

23. HCL denies the allegations in Paragraph 23 of the Complaint to the extent they reference and rely on HCL's "employee job performance metrics" which are in writing, speak for themselves, and are the best evidence of their contents; therefore, all allegations or characterizations of fact concerning HCL's "employee job performance metrics" are denied.

24. HCL denies the allegations in Paragraph 24 of the Complaint to the extent they reference and rely on HCL's "employee 401(k) policy" which is in writing, speaks for itself, and is the best evidence of its contents; therefore, all allegations or characterizations of fact concerning HCL's "employee 401(k) policy" are denied.

25. Upon information and belief, HCL denies, as stated, the allegations in Paragraph 25 of the Complaint.

26(a). The allegations in Paragraph 26(a) of the Complaint are conclusions of law to which no response is required. To the extent a response is deemed necessary, these allegations are denied as stated.

26(b). The allegations in Paragraph 26(b) of the Complaint are denied on the basis that they reference and rely upon the allegations contained in Paragraphs 14 through 25 of the Complaint which HCL has denied. By way of further response, HCL incorporates by reference its responses to Paragraphs 1 through 25 of the Complaint as if fully set forth herein.

27. The allegations in Paragraph 27 of the Complaint are conclusions of law to which no response is required. To the extent a response is deemed necessary, HCL incorporates its

responses to Paragraphs 1 through 25 of the Complaint as if fully set forth herein, and expressly denies that it discriminated or retaliated against any of its employees because of their union activities or that it sought to discourage employees from engaging in such activities.

28. HCL denies the allegations in Paragraph 28 of the Complaint to the extent they reference and rely on an alleged letter that is in writing, speaks for itself, and is the best evidence of its contents; therefore, all allegations or characterizations of fact concerning the Union's written correspondence(s) to HCL are denied.

29. HCL denies the allegations in Paragraph 29 of the Complaint to the extent they reference and rely on an alleged letter that is in writing, speaks for itself, and is the best evidence of its contents; therefore, all allegations or characterizations of fact concerning the Union's written correspondence(s) to HCL are denied.

30. HCL denies the allegations in Paragraph 30 of the Complaint to the extent they reference and rely on an alleged letter that is in writing, speaks for itself, and is the best evidence of its contents; therefore, all allegations or characterizations of fact concerning the Union's written correspondence(s) to HCL are denied.

31. HCL denies the allegations in Paragraph 31 of the Complaint to the extent they reference and rely on an alleged letter that is in writing, speaks for itself, and is the best evidence of its contents; therefore, all allegations or characterizations of fact concerning the Union's written correspondence(s) to HCL are denied.

32. HCL denies the allegations in Paragraph 32 of the Complaint to the extent they reference and rely on an alleged letter that is in writing, speaks for itself, and is the best evidence of its contents; therefore, all allegations or characterizations of fact concerning the Union's written correspondence(s) to HCL are denied.

33. HCL denies the allegations in Paragraph 33 of the Complaint to the extent they reference and rely on an alleged letter that is in writing, speaks for itself, and is the best evidence of its contents; therefore, all allegations or characterizations of fact concerning the Union's written correspondence(s) to HCL are denied.

34. HCL denies the allegations in Paragraph 34 of the Complaint to the extent they reference and rely on an alleged letter that is in writing, speaks for itself, and is the best evidence of its contents; therefore, all allegations or characterizations of fact concerning the Union's written correspondence(s) to HCL are denied.

35. HCL denies the allegations in Paragraph 35 of the Complaint to the extent they reference and rely on an alleged letter that is in writing, speaks for itself, and is the best evidence of its contents; therefore, all allegations or characterizations of fact concerning the Union's written correspondence(s) to HCL are denied.

36. HCL denies the allegations in Paragraph 36 of the Complaint to the extent they reference and rely on an alleged letter that is in writing, speaks for itself, and is the best evidence of its contents; therefore, all allegations or characterizations of fact concerning the Union's written correspondence(s) to HCL are denied. By way of further answer, HCL admits, upon information and belief, that the Union has verbally requested timekeeper records detailing bargaining unit work performed by lead analysts, which it has provided.

37. The allegations in Paragraph 37 of the Complaint are conclusions of law to which no response is required. To the extent a response is deemed necessary, HCL denies that it has failed to provide the Union with any requested information relevant to and necessary for it to carry out its duties as the exclusive collective-bargaining representative of the Unit.

38. The allegations in Paragraph 38 of the Complaint are conclusions of law to which no response is required. To the extent a response is deemed necessary, HCL denies that it has unreasonably delayed furnishing the Union with any requested information relevant to and necessary for it to carry out its duties as the exclusive collective-bargaining representative of the Unit, including but not limited to the information described in Paragraph 28 of the Complaint.

39. The allegations in Paragraph 39 of the Complaint are conclusions of law to which no response is required. To the extent a response is deemed necessary, HCL denies that it has unreasonably delayed furnishing the Union with any requested information relevant to and necessary for it to carry out its duties as the exclusive collective-bargaining representative of the Unit, including but not limited to the information described in Paragraph 29 of the Complaint.

40. The allegations in Paragraph 40 of the Complaint are conclusions of law to which no response is required. To the extent a response is deemed necessary, HCL denies that it has unreasonably delayed furnishing the Union with any requested information relevant to and necessary for it to carry out its duties as the exclusive collective-bargaining representative of the Unit, including but not limited to the information described in Paragraph 30 of the Complaint.

41. The allegations in Paragraph 41 of the Complaint are conclusions of law to which no response is required. To the extent a response is deemed necessary, HCL denies that it has unreasonably delayed furnishing the Union with any requested information relevant to and necessary for it to carry out its duties as the exclusive collective-bargaining representative of the Unit, including but not limited to the information described in Paragraph 31 of the Complaint.

42. The allegations in Paragraph 42 of the Complaint are conclusions of law to which no response is required. To the extent a response is deemed necessary, HCL denies that it has unreasonably delayed furnishing the Union with any requested information relevant to and

necessary for it to carry out its duties as the exclusive collective-bargaining representative of the Unit, including but not limited to the information described in Paragraph 32 of the Complaint.

43. The allegations in Paragraph 43 of the Complaint are conclusions of law to which no response is required. To the extent a response is deemed necessary, HCL denies that it has unreasonably delayed furnishing the Union with any requested information relevant to and necessary for it to carry out its duties as the exclusive collective-bargaining representative of the Unit, including but not limited to the information described in Paragraph 33 of the Complaint.

44. The allegations in Paragraph 44 of the Complaint are conclusions of law to which no response is required. To the extent a response is deemed necessary, HCL denies that it has unreasonably delayed furnishing the Union with any requested information relevant to and necessary for it to carry out its duties as the exclusive collective-bargaining representative of the Unit, including but not limited to the information described in Paragraph 34 of the Complaint.

45. The allegations in Paragraph 45 of the Complaint are conclusions of law to which no response is required. To the extent a response is deemed necessary, HCL denies that it has unreasonably delayed furnishing the Union with any requested information relevant to and necessary for it to carry out its duties as the exclusive collective-bargaining representative of the Unit, including but not limited to the information described in Paragraph 35 of the Complaint.

46. The allegations in Paragraph 46 of the Complaint are conclusions of law to which no response is required. To the extent a response is deemed necessary, HCL denies that it has unreasonably delayed furnishing the Union with any requested information relevant to and necessary for it to carry out its duties as the exclusive collective-bargaining representative of the Unit, including but not limited to the information described in Paragraph 36 of the Complaint.

47. The allegations in Paragraph 47 of the Complaint are conclusions of law to which no response is required. To the extent a response is deemed necessary, HCL denies that it has interfered with, restrained, or coerced employees in the exercising of any of their rights guaranteed by Section 7 of the Act, as alleged in Paragraphs 7 through 10 of the Complaint.

48. The allegations in Paragraph 48 of the Complaint are conclusions of law to which no response is required. To the extent a response is deemed necessary, HCL denies that it has discriminated against any of its employees with respect to their hire or tenure or terms of conditions of their employment, in violation of Sections 8(a)(1) and (3) of the Act, as alleged in Paragraphs 14 through 25 and 27 of the Complaint.

49. The allegations in Paragraph 49 of the Complaint are conclusions of law to which no response is required. To the extent a response is deemed necessary, HCL denies that it has failed and/or refused to bargain collectively and in good faith with the Union, in violation of Sections 8(a)(1) and (5) of the Act, as alleged in Paragraphs 14 through 26 and 38 through 46 of the Complaint.

50. The allegations in Paragraph 50 of the Complaint are conclusions of law to which no response is required. To the extent a response is deemed necessary, these allegations are denied.

In response to the remedies requested in the Complaint, HCL denies this unnumbered paragraph. HCL specifically denies both that it has engaged in any unfair labor practices and that the General Counsel is entitled to the relief requested, or to any relief whatsoever.

HCL denies each and every allegation of the Complaint unless specifically admitted above.

SECOND DEFENSE

The Complaint fails to state a cause of action upon which relief can be granted and should be dismissed in its entirety.

THIRD DEFENSE

HCL has not engaged in nor is it engaging in any unfair labor practices, both generally and as specifically alleged in the Complaint.

FOURTH DEFENSE

Any and all claims in the Complaint that are based on alleged acts that were not made the subject of an unfair labor practice charge filed with the National Labor Relations Board within six months of the acts' alleged occurrence are barred by the statute of limitations set forth in Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 160(b), as amended.

FIFTH DEFENSE

All actions in which HCL has engaged constitute legally permissible activity within the meaning of the relevant sections of the National Labor Relations Act.

SIXTH DEFENSE

Any decisions made by HCL that are the subject of this Complaint were based on legitimate, non-retaliatory reasons wholly unrelated to any anti-union animus.

SEVENTH DEFENSE

The Complaint fails to plead its allegations with sufficient specificity to provide HCL notice of the allegations raised against it and thus denies HCL administrative due process and should be dismissed in its entirety.

EIGHTH DEFENSE

The allegations made in the Complaint are barred by the doctrines of laches, waiver and estoppel because the Region failed to pursue these allegations in a timely manner resulting in extreme prejudice to the Respondent.

NINTH DEFENSE

HCL alleges and asserts those affirmative defenses provided by law as may be determined applicable to factual specifics of this litigation and pleads the same as affirmative defenses to the Complaint.

TENTH DEFENSE

HCL will rely upon all proper defenses, affirmative or otherwise, lawfully available that may be disclosed by evidence and reserves the right to amend this Answer to state such other affirmative and additional defenses and/or otherwise supplement this Answer upon discovery of facts or evidence rendering such action appropriate.

Respectfully submitted,

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

By 

Jennifer G. Betts, Esquire
Cory E. Ridenour, Esquire
One PPG Place, Suite 1900
Pittsburgh, PA 15222
412.394.3333 (phone)
412.232.1799 (fax)

Counsel for HCL America, Inc.

Dated: October 23, 2020

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **ANSWER TO ORDER CONSOLIDATING CASES, CONSOLIDATED COMPLAINT, AND NOTICE OF HEARING** has been electronically filed with Nancy Wilson, Regional Director, National Labor Relations Board, Region 6, William S. Moorhead Federal Building, 1000 Liberty Avenue, Room 904, Pittsburgh, PA 15222, this 23rd day of October, 2020. A true and correct copy of the foregoing has also been sent via email, upon the following:

Nathan Kilbert
Assistant General Counsel
United Steel, Paper and Forestry, Rubber,
Manufacturing, Energy, Allied Industrial and
Service Workers International Union, AFL-CIO-CLC
60 Boulevard of the Allies, 8th Floor
Pittsburgh, Pennsylvania 15222
nkilbert@usw.org

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

By

